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**DEPARTMENT OF JUSTICE**  
GENERAL COUNSEL DIVISION

May 26, 2010

Public Utility Commission  
Attn: Filing Center  
550 Capitol St. NE #215  
P.O. Box 2148  
Salem, OR 97308

Re: Docket No. UE-219; Testimony

Enclosed for filing in this matter is the Direct Testimony of Alan R. Dale by the Oregon Department of Fish and Wildlife.

Thank you.

Sincerely,

Kurt Burkholder  
Assistant Attorney General  
Of Attorneys for Intervenor

kbb:lal/2064448

Encl. & one copy  
Cc w/ encl.: Service list

CERTIFICATE OF SERVICE

I certify that, on May 26, 2010, I served the foregoing Direct Testimony of Alan R. Dale on behalf of the Oregon Department of Fish and Wildlife upon the parties on the service list, by U.S. Mail, and by electronic mail where paper service has been waived.

/s/ Kurt Burkholder

Kurt Burkholder

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BEFORE THE PUBLIC UTILITY COMMISSION  
OF THE STATE OF OREGON

OREGON DEPARTMENT OF FISH AND WILDLIFE

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Direct Testimony of Alan R. Dale

May 2010

1 **Introduction**

2 **Q: Please state your name, office address, and present position with the Oregon**  
3 **Department of Fish and Wildlife (“ODFW”).**  
4

5 A. My name is Alan R. Dale. My office address is 61734 Parrell Road, Bend, Oregon  
6 97702. My present position is Region Manager for the High Desert Region of ODFW.

7  
8 **Qualifications**

9 **Q: Briefly describe your educational background and professional experience.**

10 A: Both my Bachelor of Science (1977) and Master of Science (1986) Degrees in Wildlife  
11 Biology are from Colorado State University, Fort Collins, Colorado. Over the course of  
12 my 30 years of professional work in natural resources, I have been employed by the U.S.  
13 Forest Service (USFS), the Denver Water Department (DWD), and for the last twenty  
14 years the Oregon Department of Fish in Wildlife (ODFW). I served as a Biologist with  
15 the USFS and an Environmental Planner with the DWD. With ODFW I have served as  
16 the Fish Habitat Program Manager in Headquarters, the Special Programs Manager (fish)  
17 in the Central Region, and as the Region Manager in the High Desert Region.

18  
19 **Q: Briefly describe the scope of your duties with ODFW.**

20 A: In my current position as Region Manager, I supervise the implementation of ODFW’s  
21 fish and wildlife programs across an eleven-county area of Central and Southeast Oregon.  
22 Through subordinate supervisors, I manage over 105 employees with a region budget of  
23 over \$21 million. I also serve on the Department’s Executive Leadership Team (ELT)  
24 which provides input and direction to the overall leadership of the agency. As a member  
25 of ELT, I often represent the agency in high profile issues related to my region.

26

1 **Q: Have you personally been involved in negotiations related to the Klamath**  
2 **Hydroelectric Settlement Agreement (“KHSA”)?**

3  
4 A: Yes, I have been a member of the state’s negotiating team, along with representatives of  
5 the Department of Environmental Quality, Water Resources Department, and Governor’s  
6 office.

7 **Purpose of Testimony**

8 **Q: What is the purpose of your testimony?**

9 A: I will describe: the interests of ODFW and the state in resolving resource issues in the  
10 Klamath basin; the state’s involvement in re-licensing proceedings before the Federal  
11 Energy Regulatory Commission (“FERC”), and in negotiation of the KHSA; and the  
12 terms of the KHSA that are pertinent to PacifiCorp’s application to collect two  
13 surcharges to fund the costs of removing four PacifiCorp dams on the Klamath River.

14 **ODFW and State Interests**

15 **Q: Please describe the interests of ODFW and the state in resolving resource issues in**  
16 **the Klamath basin.**

17  
18 A: The Klamath basin has been the site of significant resource conflicts for decades. The  
19 most significant resource allocation conflicts have centered over water and have pitted  
20 agricultural interests against fish managers and tribes. The conflicts culminated in three  
21 recent crises: the shut-off of irrigation diversions during the drought of 2001 to protect  
22 fish populations, a large die-off of Coho and Chinook salmon in 2002 when irrigation  
23 diversions were resumed, and the curtailment of recreation and tribal fishing and the total  
24 shut-down of commercial fishing across a large area of the Pacific in Oregon and  
25 California in 2006 to protect Klamath fish stocks. During the same time, PacifiCorp was  
26 seeking a new FERC license for its Klamath River Hydroelectric Project. The

1 convergence of these events provided an opportunity for stakeholders to find a better way  
2 to address the basin's resource issues in a collaborative way.

3  
4 The interests of ODFW and the state in these Klamath basin efforts may be broadly stated  
5 to include restoration of salmonid fisheries in the basin, improvement of water quality in  
6 the Klamath River, and certainty of water supplies for farms, ranches, wildlife refuges,  
7 and the river.

8  
9 **Q: What is the role of dam removal in this effort?**

10 A: Dam removal is essential. The Klamath Hydroelectric Project has blocked the natural  
11 migration of salmon to tributaries in the Upper Klamath basin since 1918. Removal of  
12 the four dams (Iron Gate, Copco 1, and Copco 2 in California, and J. C. Boyle in Oregon)  
13 will restore fish access to over 400 miles of riverine fish habitat. In the judgment of  
14 ODFW, dam removal ensures the greatest success in restoration of salmonid fisheries in  
15 the Klamath system - more so than other methods of reintroduction that have been  
16 studied, including fish ladders or trap and haul of fish with dams in place.

17  
18 **ODFW and State Involvement**

19 **Q: Please describe ODFW and the state's involvement in the FERC relicensing  
20 proceeding and KHSA negotiations.**

21 A: ODFW and other state agencies are intervenors in the FERC proceeding. ODFW  
22 provided FERC with recommended license conditions to protect and enhance fish and  
23 wildlife resources pursuant to the Federal Power Act. Federal resource agencies provided  
24 mandatory license conditions. Those conditions were the minimum necessary for re-  
25 establishing runs of anadromous fish into the Klamath River Basin of Oregon.  
26

1 After PacifiCorp contested the federal agency conditions and they were subsequently  
2 upheld by an administrative law judge, the parties began negotiation of a dam removal  
3 alternative to relicensing. Those negotiations were temporarily suspended while all  
4 parties except PacifiCorp negotiated the separate Klamath Basin Restoration Agreement.  
5 That agreement, among other things, addresses water allocation and management among  
6 multiple uses and provides for extensive work to restore fish habitat and water quality in  
7 the Klamath basin, which, in conjunction with dam removal under the KHSA, is designed  
8 to ensure the greatest success in reintroduction and restoration of fisheries.

9 Once the separate basin agreement was agreed to in principle, the parties returned  
10 to the table with PacifiCorp and completed negotiation of the KHSA. The two  
11 settlements were executed on February 18, 2010. The Director of ODFW, Roy Elicker,  
12 signed the settlements along with other state agency heads, Governors Kulongoski and  
13 Schwarzenegger, three Indian tribes, and a coalition of irrigation districts, commercial  
14 fishing and conservation organizations, federal and California agencies, and local  
15 counties. Secretary of Interior Ken Salazar and NOAA Administrator  
16 Dr. Jane Lubchenco were signatories to the KHSA.

17 **KHSA Terms Pertinent to PacifiCorp's Application**  
18

19 **Q: Briefly describe elements of the KHSA that are relevant to PacifiCorp's surcharge**  
20 **application.**

21 **A:** One of PacifiCorp's stated objectives during negotiation of the KHSA was protection for  
22 customers from the potential liabilities associated with dam removal. The other parties  
23 were willing to accommodate that objective and achieve that certainty for PacifiCorp  
24 customers. The KHSA provides for transfer of the hydroelectric project to a dam  
25 removal entity other than PacifiCorp and legislated immunity for PacifiCorp regarding  
26 dam removal after transfer. KHSA Section 2.1.1.E.

1 The KHSA provides for funding of dam removal costs from three sources – the customer  
2 surcharges in Oregon, a customer surcharge in California, and a California bond. The  
3 Oregon surcharges are intended to produce Oregon’s share of customer contributions  
4 through annual collections that remain approximately the same during the collection  
5 period. KHSA Section 4.1.1.A.

6 The surcharges were also designed so that the customer contribution to dam removal  
7 costs would be fully funded, including accrued interest, by the year 2020. This is the  
8 target date for dam removal under the KHSA. KHSA Section 7.3.1.

9  
10 Finally, the surcharges were designed to generate moneys that would be available in a  
11 trust account for expenditures for dam removal activities as early as the summer of 2012.  
12 Under the KHSA, the Secretary of the Department of Interior will determine by  
13 March 31, 2012 whether dam removal will proceed. KHSA Section 3.3.4. If the  
14 determination is affirmative, and the two states concur within 60 days of the  
15 determination, the designated dam removal entity will commence to develop dam  
16 removal plans, apply for necessary permits, and undertake initial actions in preparation  
17 for dam removal. KHSA Section 7.2.1. Those activities are intended to be paid for from  
18 the surcharge trust accounts. KHSA Sections 1.4 (definition of ‘Facilities Removal’),  
19 4.2.4.

20 **Q: Does this conclude your testimony?**

21 **A:** Yes.

JOHN R. KROGER  
Attorney General



MARY H. WILLIAMS  
Deputy Attorney General

**DEPARTMENT OF JUSTICE**  
GENERAL COUNSEL DIVISION

May 26, 2010

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Re: Docket No. UE-219; Testimony

Enclosed for filing in this matter by the Oregon Department of Fish and Wildlife is the Direct Testimony of Nancy Pustis.

Thank you.

Sincerely,

Kurt Burkholder  
Assistant Attorney General  
Of Attorneys for Intervenor

kbb:lal/2064448-v2

Encl. & one copy  
Cc w/ encl.: Service list

CERTIFICATE OF SERVICE

I certify that, on May 26, 2010, I served the foregoing Direct Testimony of Nancy Pustis on behalf of the Oregon Department of Fish and Wildlife upon the parties on the service list, by U.S. Mail, and by electronic mail where paper service has been waived.

/s/ Kurt Burkholder  
Kurt Burkholder

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Docket No. UE-219  
Exhibit ODFW/2  
Witness: Nancy Pustis

BEFORE THE PUBLIC UTILITY COMMISSION  
OF THE STATE OF OREGON

OREGON DEPARTMENT OF FISH AND WILDLIFE

---

Direct Testimony of Nancy Pustis

May 2010

1 **Introduction**

2 **Q: Please state your name, office address, and present position with the Oregon**  
3 **Department of State Lands (“DSL”).**

4  
5 A. My name is Nancy Pustis. My office address is 775 Summer Street NE, Suite 100,  
6 Salem, Oregon 97301-1279. My present position is Western Region Manager, Land  
7 Management Division.

8 **Qualifications**

9 **Q: Briefly describe your educational background and professional experience.**

10 A: I have a bachelor of science degree from Oregon State University in Agriculture  
11 Economics, minor in Range Management. I have worked for the Department of State  
12 Lands for nearly 11 years in the land management and wetland and waterway programs.

13 **Q: Briefly describe the scope of your duties with DSL.**

14 A: I oversee the proprietary programs for the department on the western side of the state. I  
15 make ownership determinations on state uplands and submerged and submersible lands.  
16 This includes authorization of all non-exempt uses of state-owned waterway and uplands.  
17 Authorizations include uses or structures requiring waterway leases, easements, and  
18 special uses of state-owned land such as communication sites, and alternative energy.

19  
20 **Purpose of Testimony**

21 **Q: What is the purpose of your testimony?**

22 A: I will describe: the state’s claim to ownership of the beds and banks of the Klamath  
23 River; lease requirements under state law for the occupancy of state-owned beds and  
24 banks by hydroelectric projects; and an estimate of rent that would be required for the  
25 Klamath River Hydroelectric Project if it were relicensed by FERC.

26

**State's Claim to Ownership of Beds and Banks**

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**Q: Please describe the state's claim to ownership of the beds and banks of the Klamath River.**

A: Under the Equal Footing Doctrine, all lands underlying waters that were navigable at the time of statehood are owned by the state. These lands, generally located below the line of ordinary high water, are also known as submerged and submersible lands, or beds and banks. The State Land Board is authorized to determine navigability, and to assert title to submerged and submersible lands. ORS 274.402, 274.404. In 1986, the Land Board determined the Klamath River to be a navigable water for purposes of title, from the California border (River Mile ("RM") 208) to a point above the present Keno Dam (RM 231.5) at RM 233.

**Lease Requirements for Hydroelectric Projects**

**Q: Please describe lease requirements under state law for the occupancy of state-owned beds and banks by hydroelectric projects.**

A: DSL rules found at OAR 141-087 require a lease or easement for hydroelectric projects occupying state-owned submerged and submersible lands. The rules also require payment of rent under a lease, the amount of which may be based on six percent of the per acre value of adjacent upland, adjusted annually for inflation. OAR 141-087-0050.

**Rent for the Klamath River Hydroelectric Project**

**Q: What rent is currently being assessed PacifiCorp?**

A: Consistent with Section 2.5 of the KHSA, PacifiCorp has applied for a lease for the J.C. Boyle Dam and Keno Dam structures. While the leases have yet to be finalized, DSL estimates the annual rent for the J.C. Boyle Dam to be \$4,324, and for the Keno Dam to

1 be \$149. A lease and rent might also be required for the J.C. Boyle powerhouse, once its  
2 location in relation to the Klamath River at the time of statehood is confirmed.

3 **Q: What is your estimate of the rent that could be required for the Klamath River**  
4 **Hydroelectric Project if it were relicensed by FERC?**

5  
6 **A:** In addition to requiring a lease for submerged and submersible lands occupied by the J.C.  
7 Boyle and Keno Dam structures, DSL could elect to require a lease for submerged and  
8 submersible lands that are inundated by the J.C. Boyle and Keno Reservoirs. According  
9 to FERC Final Environmental Impact Statement, Table 2-1 (Nov. 2007), the J.C. Boyle  
10 Reservoir is 3.6 miles long. Behind Keno Dam at River Mile 231.5, the state claims  
11 ownership to River Mile 233, or 1.5 miles of submerged and submersible lands  
12 underlying the Keno Reservoir. The department has not determined as of this time that it  
13 would require rent for inundated lands at the Klamath River Hydroelectric Project, but it  
14 is a future option available to it.

15 Assuming DSL required a lease and rent for submerged and submersible lands occupied  
16 by both structures and reservoirs, I estimate the annual rent for the J.C. Boyle Dam at  
17 approximately \$4,324; for the J.C. Boyle Reservoir at approximately \$359; for the Keno  
18 Dam at approximately \$149; and for the Keno Reservoir at approximately \$3,300. The  
19 difference in estimated rents reflects different adjacent upland values. These amounts  
20 would total \$8,132 per year.

21  
22 FERC may issue a new license for a term ranging from 30 to 50 years. Applying  
23 the assumptions described above, the annual rents would be the following, for 30-year,  
24 40-year, and 50-year license terms by way of example:

1       \$8,132 x 30 = \$243,960  
2       \$8,132 x 40 = \$325,280  
3       \$8,132 x 50 = \$406,600

4       Again, these are estimates only. Actual rental amounts would be determined based on  
5       verification of the acreage of submerged and submersible lands occupied by the project,  
6       verification of adjacent upland values, and adjustment for inflation. Further, this estimate  
7       assumes that the methodology used to determine rent set forth in DSL rules would be the  
8       same at the time of relicensing as it is today.

9       **Q: Are these potential rental amounts discussed in the direct testimony of Corey E.  
10       Scott (Exhibit PPL/300)?**

11      A: No.

12      **Q: Does this conclude your testimony?**

13      A: Yes.

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